MINUTES

Washington DHS/ICE Liaison Meeting with AILA DC Chapter, November 19, 2013

In attendance for DHS: Field Office Director M. Yvonne Evans; Deputy Field Office Director Leonard DeSanti; Chief Counsel Raphael Choi; Deputy Chief Counsel George Ward; Senior Attorney Karen Donoso-Stevens; Assistant Field Office Director Matthew Munroe; Assistant Field Office Director Richard Cropp; Assistant Field Office Director Paul Capicchioni; Assistant Field Office Director Norman Parrish; Assistant Field Office Director Laurence Carroll; Acting Assistant Field Office Director Diane Witte

In attendance for AILA: D.C. Drake, Julia Toro, Chuck Tievsky, Jackie Lee

1. Can you provide an update about the implementation of the new Segregation Policy that was recently issued?
   http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.
   Has ICE ERO WAS conducted internal trainings? Have the contract facility personnel been trained? To what extent has this new memo been implemented?

   Yes, ICE has conducted internal training for all regular and contract personnel. The Segregation Policy has been fully implemented as of the start of November, 2013.

2. Question: Human Rights First has learned that ICE ERO (or perhaps HSI) officers are visiting the homes of asylum seekers with pending I-589s in order to assess whether or not their asylum applications are "frivolous." When questioned about the purpose of this, the ICE officers have indicated that they are investigating at the request of the Arlington Asylum office. Could you please tell us more about this initiative? What are the criteria for determining whether an application is frivolous? How often are these visits occurring? The ICE officers seemed to indicate that they are only interested in investigating affirmative applications before ZAR, but not court cases. Is this correct?

   If such investigations are taking place it is not being done by ERO. It may be a program administered by Homeland Security Investigations (HSI) in coordination with USCIS. The proper agency for follow-up is the Asylum Office (ZAR).

3. An AILA member has inquired about ICE/ERO's protocol on requesting confirmation of Order of Supervision compliance by a client. The AILA member received an RFE for an I-765 request made pursuant to the Order of Supervision and the ERO told him that any USCIS requests should be made directly from USCIS to the ERO and the ERO will not provide any compliance verification to the client or attorney for any USCIS benefit being requested when the RFE specifically states if on ISAP the FN needs a letter from the ERO of compliance. Please clarify.

If a foreign national is not detained, USCIS should accept a copy of the supervision/reporting paperwork. ERO can provide compliance information to USCIS via email. Attorneys can call the case officer using the docket lists provided by ERO with any questions and requests.

4. An AILA member has inquired about the possibility of prosecutorial discretion in the case of a client who was granted VD and whose appeal to the BIA was dismissed, with VD reinstated. The FN has a civil matter pending to do with the lawfulness of his detention by local authorities. The FN is no longer in ICE custody. However, he is the sole plaintiff at the moment in a non-frivolous civil suit against a local county. He was unlawfully detained (ICE was involved in that their detainer policy at the very least caused confusion in the matter) for 10 days. The attorney's inquiries to ICE/ERO have not been answered; the proposal being possible joint reopening and administrative closure to allow time for the civil suit to be resolved. What is ICE's policy on such matters, if any?

   In general, reopening a matter in the exercise of prosecutorial discretion for the purpose of administrative closure is discouraged. Requests for joint reopening may be filed with ICE/OCC. VD extension requests can be submitted to ICE/ERO. The law recognizes VD as an immigration benefit requiring a favorable exercise of discretion, and ICE treats VD accordingly.

5. It is well known that ICE Detainees may be transferred to detention in other locations. Reasons are varied but seem to include availability of detention space and transfer in preparation of removal. Is there an established protocol regarding which detainees are transferred and under what circumstances? If relief is available in a case or if there are equities present for deferred action for example, is there any way for AILA members to communicate with ICE to prevent a transfer ahead of time? Will ICE consider factors such as a G-28 filed by local counsel, medical reasons, young children etc. to prioritize bed space for our clients?

   Transfers occur in accordance with the ICE Detainee Transfer policy and are determined based on representation by an attorney, family and community ties, security concerns as well as any medical needs. ICE emphasized that if a Foreign National is represented by local counsel, they are generally not considered a priority for transfer. Every effort is made to communicate with G-28 attorneys, but privacy concerns prevent ICE from revealing any information to non-G-28 attorneys or others. If an FN is in transit within the United States, their information will not be found on the ICE detainee locator website until they are registered to have arrived at that location. FNs are provided a phone call at

their time of arrival. There is no system for alerting attorneys or anyone else of transfers in advance due to security concerns. Typically, for ICE to suspend a transfer in preparation for removal, a stay of removal is necessary, or the filing with EOIR of a legally sufficient motion that triggers an automatic stay. Motions that requests ICE's discretionary joinder to a stay request, or reopening of a legal determination that resulted in the FN's removal order, may be filed with OCC. ICE will not, however, suspend a transfer or removal based on an attorney's assertion that a motion or other application will be filed. ICE has seen instances where nothing was filed despite assurances from attorneys. Local ICE/OCC and ERO will generally be able to locate an FN even if that FN is being transferred and is not in the ICE detainee locator system.

6. If an applicant for admission is placed in proceedings and/or detained at Dulles Airport, is the NTA (if filed) always filed with the Arlington Immigration Court?

   If the FN is taken into custody by ERO after being arrested by CBP at Dulles, they are generally placed into proceedings in Arlington Immigration Court, regardless of residence information. If the FN is not detained or is released, the FN will be placed in proceedings in the Immigration Court having jurisdiction over their place of residence. In non-detained cases it is up to CBP (not ERO or OCC) to file the NTA. If detained, they are processed locally.

7. Members have reported difficulty in having their filed G-28s recognized. There are various fax numbers to submit a G-28 but none seem to work. Mailing a G-28 is highly impractical when time is of the essence. What is the most effective way for an attorney to get his client's signature and submit his G-28 if he cannot travel to a detention center and enter it in person?

   ICE clarified its protocol in this regard. Attorneys should first email completed G-28s to the dedicated email address: g-28.was@ice.dhs.gov. White scanned and emailed G-28s are OK and ICE does not print them for themselves on blue paper. Place the alien number and "G-28" in the subject line of the email. The email inbox is checked throughout the work day and ICE emphasizes there have been great improvements in this area. Attorneys are advised that each case is assigned to a specific ICE officer according to the last three digits of the alien number. An updated list of ICE officers, names, phone numbers, and emails, and supervisors, is regularly provided by ICE and is posted by AILA on its website. Attorneys are encouraged to contact that officer by email and/or telephone. After sufficient time has passed with no response from the case officer, attorneys may elevate their request by contacting a supervisor. Three attempts to contact the case officer are adequate to consider elevating the request. The attorney should use their judgment given the urgency of the matter before elevating. AILA will post a

practice pointer about this process in the near future.

8. Please provide an email address or phone number of a supervisor for attorneys who cannot reach an ICE officer in charge of a case to escalate the concern to a supervisor?

   AILA has been provided with an updated list of ICE officers and supervisors, which is posted on the AILA DC Chapter website.

9. AILA's DC Chapter has various liaison committees that interact with different components of DHS. Several of these committees have a "clearinghouse" function whereby AILA members who have tried established channels and have worked with the agency but cannot get timely resolution may use the clearinghouse to bring a case to the attention of the director. Would ICE/ERO be open to this kind of clearinghouse function? In our experience this kind of approach has several advantages: (1) AILA Clearinghouse Committee members can vet the cases to determine which are actually worthy of escalation under stated guidelines given by the agency; (2) such escalation requests can be very effective in emergency situations; (3) this approach allows direct feedback from the private bar to the director about his or her office's effectiveness and practices in the field; (4) this approach often lessens the number of phone calls and visits by attorneys who have no way to solve a problem except for diligently pinging that officer or sending/submitting letters that the officer may not receive or timely address.

   ICE prefers to rely on its current system. WAS/ICE has an "outreach" email inbox. The inbox for any given ICE location may be found at www.ice.gov at "HSI/ERO" – click "ERO" then identifying the local office, which will provide information specific to that office.

10. Is it WAS ICE/ERO policy to require persons granted withholding of removal to apply for third country resettlement where it is infeasible for the withholdee to return to the country of citizenship? If so, under what circumstances is such a request invoked, and what is the legal basis for doing so?

    Persons granted withholding of removal are required to cooperate in identifying third countries to which they may be removed and, if applicable, obtaining travel permission to that third country. ICE evaluates each file for indicia of connections to third countries such as family ties, prior residence, or dual citizenship to facilitate the ease of determining a possible third country for removal. Persons with withholding must make an effort to assist in their removal to a third country by applying for travel documents as requested.